

**JUL 07 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUVENILE,

Defendant - Appellant.

No. 05-10634

D.C. No. CR-04-01098-PHX-FJM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
Frederick J. Martone, District Judge, Presiding

Argued and Submitted June 14, 2006  
San Francisco, California

Before: HUG and O'SCANNLAIN, Circuit Judges, and MILLER<sup>\*\*</sup>, District  
Judge.

Juvenile pled guilty to involuntary manslaughter, was sentenced to twelve  
months in custody, and ordered to pay restitution. Juvenile appeals the portion of  
the restitution order that requires her to pay \$23,600 to the parents of the victim

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited  
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> The Honorable Jeffrey T. Miller, United States District Judge for the  
Southern District of California, sitting by designation.

for the gas and food expenses they incurred when visiting their son, the victim, in the hospital as exceeding the authority of 18 U.S.C. § 3663 (2005). Juvenile also argues that the restitution order was based on insufficient evidence. We affirm the decision of the district court.

Juvenile's waiver in her plea agreement of her right to appeal the entry of judgment, the imposition of sentence, or to make any collateral attack on the judgment or sentence, did not waive her right to challenge the legality of the restitution order. *United States v. Phillips*, 174 F.3d 1074, 1076 (9th Cir. 1999). Furthermore, because the plea agreement was ambiguous with respect to the amount of restitution to be paid, Juvenile lacked adequate notice to waive her right to challenge the restitution order. *United States v. Gordon*, 393 F.3d 1044, 1050 (9th Cir. 2004).

The district court properly permitted the parents of the victim to recover the costs of visiting the victim in the hospital. We have previously acknowledged that the "support and comfort of the family" can be considered necessary nonmedical care and treatment. *United States v. Keith*, 754 F.2d 1388, 1393 (9th Cir. 1985). In the present case, the victim had been rendered quadriplegic by the accident and could not himself travel to be with his family, who were necessary to make the victim's medical decisions because of his serious condition. Under *Keith*, the

victim could have recovered the cost of bringing his family to him. Because the parents may stand in the shoes of a deceased victim for purposes of restitution, 18 U.S.C. § 3663(a)(2), the parents are entitled to recover their travel expenses.

It was also proper for the district court to allow the parents to recover their travel expenses, notwithstanding the fact that they received monetary gifts from friends and family during the period in question. Juvenile did not establish that these gifts were earmarked for travel expenses or that the parents did, in fact, use the money for travel expenses. *See United States v. Crawford*, 169 F.3d 590, 593 (9th Cir. 1999).

Finally, the district court did not abuse its discretion in calculating the amount of restitution based on the parents' estimates of their expenses. *United States v. Soderling*, 970 F.2d 529, 534 (9th Cir. 1992) (noting that a district court has "wide latitude" to fashion and calculate a restitution order).

Accordingly, the decision of the district court is

**AFFIRMED.**